



Published on *United States Bankruptcy Court* (<http://www.canb.uscourts.gov>)

[Home](#) > Memorandum of Decision Re: Priorities

Friday, November 29, 2002

DO NOT PUBLISH This case disposition has no value as precedent and is not intended for publication. Any publication, either in print or electronically, is contrary to the intent and wishes of the court.

In re

YURY and IRINA TRUBNIKOV,

[Debtor](#)  (s).

No. 01-11202

_____/

YURY and IRINA TRUBNIKOV,

[Plaintiff](#)  (s),


v.


A.P. No. 02-1079

AMWEST GENERAL INSURANCE, INC., et al.,

[Defendant](#)  (s).

Memorandum of Decision

In 1997, [Chapter 11](#)  debtors and plaintiffs Yury and Irina Trubnikov sold their home at 4 Bay Way, San Rafael, California, to creditors and defendants Vakha Evloev, Fatima Evloeva and Ruslan Torshkoev,. Later that year, these creditors brought a state court action against the Trubnikovs seeking rescission of the sale due to misrepresentations concerning the property.

Trial of the state court action was held in late 2000, and on March 21, 2001, the state court entered its judgment rescinding the sale and awarding Evloev et al. the sum of \$97,325.02 plus interest in damages as well as \$127,738.50 in attorney fees. The judgment provided that Evloev et al. had a [lien](#)  on the property "for all of the total sums due hereunder."

The Trubnikovs appealed the judgment against them. While the appeal was pending they re-took possession of the home, filed their Chapter 11 petition, and sold the property free and clear of all liens with those liens attaching to the property. This [adversary proceeding](#) was filed by the Trubnikovs to establish the validity and [priority](#) of the various lienholders.

In addition to the Trubnikovs and Evloev et al., two judgment lienholders of the Trubnikovs, DeMartini & Walker and Martha Caron, have participated in the litigation. All of these parties have made incorrect arguments which the court will address before finally determining rights and priorities.

The state court granted Evloev et al. their lien on the property pursuant to California Civil Code § 3050, which permits a court to award a purchaser's lien upon rescission of a sale. The Trubnikov's erroneous argument is that this court has the power to limit the purchaser's lien to the damages and not the interest or attorney fees notwithstanding the express language of the judgment that the lien is for all of the awarded sums. This court is not an appellate court, and has no power to reverse a state court judgment. In re Gruntz, 202 F.3d 1074, 1078n1 (9th Cir. 2000). If the extent of the lien was error, it must be corrected by the state appellate courts.

DeMartini & Walker and Caron admit that their judgment liens are junior to the Evloev judgment, but argue, like the Trubnikovs, that the purchaser's lien should have been limited only to \$97,325.02. They add that since they were not parties to the state court lawsuit the state court judgment is not binding on them. The flaw in their argument is that judgment lienholders do not have the status of bona fide purchasers for value under state law. Their liens only attach to whatever rights the Trubnikovs might have; they are not entitled to greater rights. Schut v. Doyle (1959) 168 Cal.App.2d 698, 703; 20th Century Plumbing Co. v. Sfregola (1981) 126 Cal.App.3d 851, 854. They therefore have no standing to attack the extent of the Evloev lien.

Evloev et al. are not correct in their assertion that because the bankruptcy court cannot reverse the judgment awarding their lien it must order their immediate payment. The lien is still subject to bona fide dispute, and might be reversed by the state appellate courts. It is within this court's discretion to leave the lien attached to the proceeds until the right to a lien is final; to hold otherwise would negate the power to sell free and clear provided in § 363(f)(4) of the [Bankruptcy Code](#).

For the above reasons, and for further reasons stated below, the court will decree as follows:

1. The deed of trust of Amwest Insurance Company is entitled to first priority.
2. The lien granted to Evloev et al. by the state court judgment of March 21, 2001, is entitled to second priority and shall be paid when and if it becomes final.
3. The unrecorded deed of trust in favor of deed of trust in favor of Lila and Jack Hoefling is avoided pursuant to § 544(a)(3) of the Bankruptcy Code and preserved for the benefit of the estate pursuant to § 551. It is entitled to third priority. The amount owed on this obligation is

a reserved issue.

4. Since the judgment liens of DeMartini & Walker and Caron and the tax lien of the State of California Employment Development Department attached at the same time when the Trubnikovs re-acquired title to the property, they are of equal priority and junior to all of the above liens. 5 Miller & Starr, Cal. Real Est. (3d ed. 2000), § 11:116. The tax lien and the judgment lien of DeMartini & Walker attach to the interest of debtor Yury Trubnikov only. The two judgment liens, but not the tax lien, are subject to the debtors' homestead rights.

5. The judgment lien of Mila and Victor Alemasov, having been created after bankruptcy and in violation of the [automatic stay](#)ⁱ, is void.

Counsel for the debtors shall submit an appropriate form of judgment which has been approved as conforming to this memorandum by counsel for Evloev et al., counsel for DeMartini & Walker and counsel for Caron. This memorandum constitutes the court's findings and conclusions pursuant to FRCP 52(a) and FRBP 7052.

Dated: November 29, 2002

Alan Jaroslovsky
U.S. [Bankruptcy Judge](#)ⁱ

Source URL (modified on 11/03/2014 - 2:11pm):

<http://www.canb.uscourts.gov/judge/jaroslovsky/decision/memorandum-decision-re-priorities>